



Mr Romlie Mokak/ Ms Lisa Gropp
Commissioners
Productivity Commission
Locked Bag 2 Collins St
EAST MELBOURNE VIC 8003

Via email: indigenous.arts@pc.gov.au

Dear Commissioners,

Re: Draft Report Aboriginal and Torres Strait Islander Visual Arts and Craft - July 2022

eBay Australia welcomes the opportunity to provide a submission to the Productivity Commission's draft report into Aboriginal and Torres Strait Islander visual arts and craft. We support and acknowledge the importance of Aboriginal and Torres Strait Islander visual arts and craft in terms of culture, history, identity as well as a means to expand economic opportunity for indigenous artists.

About eBay

For more than 25 years, eBay has enabled commerce and economic opportunity for individuals, entrepreneurs, businesses and organisations of all sizes. Globally, there are 1.6-billion listings on eBay sites and 138-million active consumers. In Australia, 40,000 Australian businesses sell on ebay.com.au with 11 million unique monthly visitors.

As a marketplace, eBay's role is to facilitate a safe and trusted way for businesses and consumers to transact with confidence. While responsibility for listing on our platform remains with the individual or business that originally listed the item, we support sellers and consumers with a range of services, guarantees and feedback opportunities to ensure transactions can be undertaken safely.

Indigenous Art on eBay

As Australia's leading online shopping site, eBay Australia is committed to ensuring that both buyers and sellers can engage with confidence on our platform.

As the Draft Report indicates, Artists sell works through a range of channels including art centres, fairs galleries as well as online platforms, like eBay.

Before selling on eBay, all users are required to agree to eBay's User Agreement¹. Our User Agreement includes acknowledgement of our policies including our Selling Art policy² and Artefacts and Cave Formations policy³.

Our Selling Art Policy provides that original artwork and artwork a seller is authorised to resell may be listed for sale on eBay.

We encourage the lawful sale of art on eBay and have previously worked with members of the art community on eBay as well as various third-party organisations serving the industry to help develop a code of conduct for selling works of art on ebay. We encourage both sellers and buyers of indigenous art, to review the Indigenous Art Code⁴ to learn about ethical trading practices.

When selling art on eBay, a seller must abide by all laws relating to the sales of works of art. eBay assists in the prosecution of violators of the law in this respect.

To ensure the protection of items of cultural importance for Aboriginal and Torres Strait Islanders, our Artefacts and Cave Formations policy makes clear that items considered sacred by Aboriginal or Torres Strait Islander persons can't be sold on eBay. eBay works closely with both domestic and global databases to assist in the identification of stolen works of art and cultural items including UNESCO and INTERPOL.

While any community member can report a listing on eBay they feel is in violation of our policies, to assist in our enforcement of these matters, we have provided a number of trusted Australian third-party organisations, including art centres, with escalated reporting pathways to our global regulatory team. This helps ensure that review of items flagged by these identified bodies is undertaken as a priority.

In addition we are currently updating our Selling Art Policy to reflect our recognition of Indigenous cultural and intellectual property. This update will confirm that sellers must not list, sell, or promote materials, products, or services which use Indigenous Cultural and Intellectual Property in an unauthorised way. Sellers that do so, may have their items removed or have other sanctions applied on their account.

Concerns with Mandatory Labelling of Inauthentic Products

While eBay appreciates the drivers behind the Commission's proposal to introduce a mandatory labelling system for inauthentic products, we do hold concerns that the implementation of such a system would be highly complex and may potentially result in ongoing compliance risks for artists and authorised sellers.

¹ <https://www.ebay.com.au/help/policies/member-behaviour-policies/user-agreement?id=4259>

² <https://www.ebay.com.au/help/policies/prohibited-restricted-items/selling-art-policy?id=4284>

³ <https://www.ebay.com.au/help/policies/prohibited-restricted-items/artefacts-cave-formations-policy?id=4282>

⁴ <https://indigenousartcode.org/>

The Draft Report provides that mandatory labelling of inauthentic products would ensure

- Compliance costs would predominantly fall on those producing inauthentic goods, rather than those producing authentic products.
- Failure to include a label where one should have been present would enable regulators to take action under the ACL.
- Consumers and other industry participants would be able to report concerns about compliance to assist enforcement.

However we hold concerns that such an approach may both confuse consumers and lead to significant levels of both intentional and inadvertent non-compliance.

Generally, labelling has been utilised to provide a positive restatement of an aspect of a product (for example businesses that utilise the Australian Made mark) or, as under mandatory schemes, information such as:

- food information
- product measurements
- the business's name and address
- environmental performance
- safety information.

A label based around a product being “inauthentic” may prove to simply confuse consumers as to what is being referred to as “inauthentic”. The Commission’s suggestions that such a scheme would need to be narrowly defined and a test of reasonableness applied (on what constitutes inauthenticity) may assist here.

In addition, with the absence of a label **indicating** authenticity, the motivations for a seller of an inauthentic product **not** to apply a label would likely increase. Similarly, enforcement would be focussed on those items that do not include the label and may see authentic items regularly flagged for review placing Aboriginal and Torres Strait islander artists and authorised sellers in a position of having to prove the authenticity of their products.

Despite these concerns, we believe further examination of this proposal is deserved.

We further note that while the Draft Report discusses Non-Fungible Tokens (NFTs)⁵ and flags that the use of NFTs by Aboriginal and Torres Strait Islanders in the sale of digital art is presently limited, the Report does not examine the role NFTs can play as a means of

⁵ We note eBay has recently acquired an NFT marketplace:
<https://investors.ebayinc.com/investor-news/press-release-details/2022/eBay-Acquires-Leading-NFT-Marketplace-KnownOrigin/default.aspx>

authentication for physical arts and craft⁶. While this is an emerging area of application, it may provide a future technology solution in ensuring the protection of original artworks.

Thank you once again for the opportunity to participate in this consultation. If you wish to discuss these matters further, please feel free to contact the writer via

Yours sincerely,

Luke Aitken
Head of Government Relations and Public Policy
eBay Australia and New Zealand

⁶ <https://sensoriumxr.com/articles/physical-nfts-explained>